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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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MYANMAR: A state that requires the foundations for justice institutions to be built to achieve a stable change

The Asian Legal Resource Centre congratulates the people of Myanmar for successfully and peacefully electing a democratic government through national elections held in November 2015. The country and its people are, however, for all practical purposes still under the influence of militarisation that has gripped the country since 1959. For instance, the people of Myanmar and their institutions do not have a memory of independent justice institutions.

Concepts like presumption of innocence, right to silence, and independent adjudication of disputes have never been given a chance to take root in the country. Instead what is rooted is the dependence upon the patronage of the powerful, a character that is deeply etched into the very edifices of the country's justice institutions. So much so, even professionals like lawyers and judges do not know the meaning and purpose of professional freedom.

This doesn't mean that Myanmar does not have a justice system. The singular purpose for which professionals like police officers, administrative agencies of the state, the prosecutors and the judges were used by the military in Myanmar was the subjugation of the population – to make them comply, without fail, to the presidential and military orders promulgated for the past 57 years in the country. Hence, what Myanmar currently owns is a justice system with a memory of functioning as an enforcer, rather than a deliverer of justice.

Despite the elections that have technically ended military rule in Myanmar, the country has a long way to travel to taste the true fruits of democracy, freedom, and dignity of individuals. There still exist deep divides between ethnic communities in Myanmar, which need to be bridged through reconciliation and dialogue. The country is poor, with wide income disparities between former military officers and members of the ordinary public. The Constitution is the product of military rule, which is incompatible with true notions of democracy and democratic governance.

Fundamental to changing the current state of affairs in Myanmar is a thorough overhaul of the country's justice institutions, in letter and spirit. For the culture of independence and professionalism to be established in the Myanmar's justice processes, the country should be encouraged and assisted to revise, overhaul, and build from the very basics its justice institutions.

This requires a long-term commitment from the Human Rights Council for Myanmar. While Myanmar is encouraged to ratify key human rights documents, legal professionals in the country should be provided adequate exposure to basic and advanced concepts of human rights, independence, and justice.

Judges and all other government officers in Myanmar are paid some of the lowest salaries offered in the region. Courts and other facilities for justice institutions to undertake their day-to-day work do not exist in adequate numbers in the country. Similarly, the Myanmar police and other law enforcement agencies should be demilitarised at a fast pace, failing which these vital agents of the State could form a formidable stumbling block to change in Myanmar.
The ALRC therefore urges the Council to consider the situation in Myanmar and engage with the country with adequate and nuanced understanding about the practical and existing realties in that State, and not to repeat mistakes that the UN made, despite good intentions, in Cambodia and Nepal. While ratification of key human rights treaties and the strengthening of the Myanmar National Human Rights Commission are good initiatives, it must not be presupposed that the country has basic institutions with a memory of protecting fundamental freedoms and the capacity to deliver justice.

It is not enough to train State agencies, like the police officers of Myanmar, on human rights norms and principles. The country should also be assisted at a substantial scale to setup institutional structures without which such training will be rendered a meaningless exercise.

For instance, the country does not have adequate scientific crime investigation facilities and hence investigators depend on oral testimonies to investigate crimes of all nature. In such an environment, if the police officers receive training on the absolute prohibition of torture, they will be unable to put the training into practice; this is because they will have to

resort to methods of making the accused and the witness testify to undertake the investigation, for which, so far, use of brute force is the only means.

Likewise, while it is important to instil principles against corruption through trainings and seminars to judges, prosecutors, police officers, and other State officers, such training will have no purpose, if the officers continue to receive alarmingly low pay, with which they cannot meet monthly living expenses. Therefore, human rights assistance to Myanmar must not be limited to training and ratification of human rights documents, like what the UN, and several member states of the Council, through bilateral agreements, have delivered in countries like Nepal and Cambodia.

In both Nepal and Cambodia, situations did not improve despite huge amounts of international resources being spent to improve human rights standards. In both countries, international assistance was limited to training and preaching on human rights principles, a process that failed to deliver adequate results, a mistake the Council should not promote to be repeated in Myanmar.

Today Myanmar is a receptive country to change and the people of Myanmar have proved that they can achieve what was unthinkable two years ago. What Myanmar requires now is engaging and encouraging dialogues and adequate resources and technical assistance to assist and reassure the country, and its institutions, to substantially overhaul. Any delay in this, and an approach of exclusively limiting engagements to preaching of human rights norms, will neither benefit Myanmar nor the global human rights movement.